

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 69**

As Recommended by Senate Committee on
Utilities

Brief*

Sub. for SB 69 would direct the Legislative Coordinating Council (LCC) to authorize a study of retail rates of Kansas electric public utilities.

Purpose and Scope

The bill would specify the purpose of the study would be to provide information that may assist future legislative and regulatory efforts in developing electric policy that includes regionally competitive rates and reliable electric service. The utilities that would be subject to the study include electric public utilities, as defined in Chapter 66 of the *Kansas Statutes Annotated*; electric cooperative public utilities exempt from Kansas Corporation Commission (KCC) jurisdiction; and the three largest municipally owned or operated electric utilities by customer count.

Selection, Rights, and Duties of Study Organizations

The bill would require the LCC to select, by an affirmative vote of at least five members (including at least one vote from a minority party member), one or more independent organizations that have experience evaluating electric utilities. The study also would require input from

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

residential, commercial, and industrial customers, electric utilities, and other stakeholders.

Any organization selected by the LCC to conduct the study would be authorized to request data for any electric utility as defined above, and the utility would have at least 14 days to respond. To ensure nondisclosure of confidential business information, the organization would be required to enter into a confidentiality agreement with the utility prior to making a request for information.

Duties of the KCC

The bill would require the KCC to assist any organization selected to conduct the study by sharing any subject matter knowledge regarding electric utilities in Kansas or by facilitating the procurement of any necessary information requested by the organization for the study. Such information would be subject to the Kansas Open Records Act, the Judicial Review Act, the Kansas Administrative Procedures Act, and any other applicable law or regulations applicable to the KCC.

Disputes regarding the provision of information would be decided by the KCC. The KCC also would be responsible for establishing reasonable protections for the treatment of confidential information.

The KCC would be responsible for paying the costs of the study through assessments upon utilities that are subject to the study.

Issues to Be Studied

The bill would require the study to be completed in two parts. The first portion of the study, which would be required to be completed by January 8, 2020, would examine the following issues:

- The effectiveness of current Kansas ratemaking practices, including whether:
 - Current ratemaking adequately attracts needed utility capital investments and adequately discourages unnecessary capital investments in Kansas;
 - Current ratemaking appropriately balances utility profits with the public interest objectives of achieving competitive rates over time while providing the best practicable combination of price, quality, and service;
 - Kansas electric public utilities are currently recovering from Kansas retail electric ratepayers the full or partial cost, including a return on investment, of any investments no longer fully used or required to be used in service to the public within Kansas, including, but not limited to, generation capacity investments;
 - The investments Kansas electric public utilities have made in electric transmission and renewable generation resources have contributed, and to what extent, to the obsolescence of all the other generation facility investments of such utilities;
 - Allowing Kansas investor-owned electric public utilities to recover costs through surcharges and riders, without a comprehensive ratemaking process, has unnecessarily contributed to rising wholesale and retail electricity prices;
 - The current ratemaking processes for Kansas electric cooperatives and municipal utilities are in the public interest; and
 - Electricity providers in surrounding states are subject to similar state laws, regulations, and

oversight to such requirements in Kansas;
and

- Options available to the KCC and the Kansas Legislature to affect Kansas retail electricity prices to become regionally competitive while providing the best practicable combination of price, quality, and service, including whether:
 - Capital expenditures and operating expenses of Kansas electric public utilities can be managed to achieve and sustain competitive retail rates while maintaining adequate and reliable service;
 - Any performance-based regulation, economic development initiatives, price-cap regulation or other non-traditional ratemaking methods should be considered to reduce retail electric rates or the level of increase of any rates;
 - Competitive markets for retail electricity could benefit all Kansas consumers;
 - Further investments in energy efficiency and renewable energy, including revenue decoupling and renewable energy incentives, could benefit all Kansas consumers;
 - Securitized ratepayer-backed bonds could benefit utilities and ratepayers by reducing investment risk, facilitating the recovery of certain stranded costs from under-utilized or otherwise obsolete generating and other facilities and lowering retail electric rates, and assisting in the transition to new technologies, including a review of whether securitized bonds could be effectively utilized by Kansas utilities;
 - Kansas sales tax, property taxes, assessment rates, and other fees and taxes on utilities are comparable to other states in the region and

how such taxes and fees impact the competitiveness of utility rates;

- Kansas electric utilities and the KCC may reduce the cost impacts of decisions of the Southwest Power Pool (SPP) by advocating for certain positions through the SPP's stakeholder and regional state committee processes, including an identification of current and future issues most likely to impact Kansas retail electric rates;
- Any other regulatory actions are available to the KCC to manage or reduce retail electric rates; and
- Legislative enactments could address retail electric rate escalation in Kansas.

The second part of the study, which would be required to be completed by July 1, 2020, would examine other consequential energy issues materially affecting Kansas electric rates, including:

- Whether any costs incurred by Kansas electric public utilities to build and operate electric vehicle charging stations, including any necessary upgrades to distribution infrastructure, are recovered from ratepayers not using electric vehicle charging services;
- How rates for electric vehicle charging services should be designed to ensure such rates are just and reasonable and not subsidized by other utility customers;
- The potential effects of deregulating electric vehicle charging services in Kansas, including whether deregulation would ensure that electric vehicle charging services are not subsidized by public utility ratepayers not using electric vehicle charging services;

- Whether Kansas consumers could benefit from improved access to advanced energy solutions, including micro grids, electric vehicles, charging stations, customer generation, battery storage, and transactive energy;
- The extent to which transmission investments by Kansas electric public utilities have impacted retail rates, including any incremental regional transmission costs incurred by Kansas ratepayers for transmission investments in other states, and whether such costs have been fully offset by financial benefits such as improved access to low cost renewable energy and wholesale energy markets;
- The costs and benefits incurred by Kansas ratepayers for transmission investments in Kansas used to export energy out of Kansas;
- How rate increases or the associated rising costs of Kansas investor-owned electric public utilities impact the retail electric rates of Kansas electric cooperatives and municipal utilities;
- Whether retail electric rates in Kansas are a material barrier to economic development in Kansas;
- The impact of contract rates with commercial and industrial customers and economic development rates on other customer classes, including whether expanded utilization of such approaches could benefit all customers over time;
- Whether Kansas electric public utilities recover their costs of serving customers from each customer class on the basis of cost causation;

- How cyber and physical security and grid stabilization efforts have affected, or are projected to affect, electric public utility rates;
- The value of a utility integrated resource planning process that requires state regulatory approval; and
- Economic analysis of the price fluctuations of generation fuels on the cost of electricity.

The bill would require both parts of the study be made available on the KCC's website.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs.

In the Senate Committee on Utilities hearing, representatives of Associated Purchasing Services, the Citizens' Utility Ratepayers Board, the Clean Energy Business Council, the Kansas Chamber of Commerce, the Kansas Industrial Consumers Group, and Kansans for Lower Electric Rates testified in support of the bill. Written-only proponent testimony was provided by representatives of Americans for Prosperity, Kansas Interfaith Action, Spirit Aerosystems, Walmart, and Wichita Public Schools.

Representatives of Atmos Energy, Black Hills Energy, Empire District Electric, Evergy, the KCC, Kansas Electric Cooperatives, Inc., Kansas Gas Service, and Kansas Municipal Utilities testified in opposition to the bill.

Neutral testimony was provided by representatives of the Kansas Grain and Feed Association and the Kansas

Sierra Club. A representative of Renew Kansas provided written-only neutral testimony.

The Senate Committee adopted a substitute bill, which included the following changes agreed upon by stakeholders:

- Removed the extent and impact of electric rate changes from the issues to be studied;
- Removed the questions of compensation structures, utility service territories, political and civic expenditures, and representation on cooperative boards from items to be studied;
- Removed a provision mandating KCC evaluation of competitiveness of proposed electric rates;
- Removed a provision mandating KCC assessment and report of regional gas and electric rates;
- Added a section stating the study's purpose;
- Modified the number of municipal utilities subject to the study;
- Added utility data protections;
- Required minority party support for LCC decisions regarding the study;
- Separated the study into two parts, with two completion deadlines; and
- Added the following questions to be studied:
 - Securitization;
 - SPP rates and processes;
 - Impact of taxes and fees;
 - Impact of special contracts and economic development rates;

- Expanded options on renewables, energy efficiency, and new technologies;
- Impact of integrated resource plans; and
- Impact of cyber and physical security.

The Senate Committee made further changes to the substitute bill to clarify language concerning the two parts of the study and to modify the language concerning five items to be studied. The Senate Committee also added electric utilities to the list of stakeholders from which the selected study organization should seek input.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the LCC indicates enactment of the bill would result in additional expenditures of approximately \$12,475 from the State General Fund for compensation, subsistence, mileage, and tolls for LCC members to attend two to three meetings held to select the one or more independent organizations based on the requests for proposal.

The KCC estimates enactment of the bill would result in increased expenditures for the agency of \$1,150,000 in FY 2020 and approximately \$137,500 in out years. The FY 2020 costs are based on paying \$1.0 million for the study and filling 2.00 additional FTE positions. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*. [Note: The fiscal note also includes the fiscal impact of Section 2 of the bill, as introduced, but that fiscal information no longer applies as Section 2 was deleted in the substitute bill.]

A fiscal note for the substitute bill was not available at the time the Senate Committee took action.